

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

BRIAN DAVID GUNDERSON,

Plaintiff,

vs.

ED MCLEAN, SUZY BOYLAN, and
JANET ERB,

Defendants.

CV 14-29-M-DLC

ORDER

FILED

APR 03 2014

Clerk, U.S. District Court
District Of Montana
Missoula

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendations on February 2, 2014, recommending that Plaintiff's complaint be dismissed, that the clerk of court should close the matter and enter judgment, that the clerk of court have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915, and that the clerk of court have the docket reflect that the Court certifies pursuant to Fed.R.App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.

Plaintiff did not timely object to the Findings and Recommendations, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendations for clear error. *McDonnell*

Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

There is no clear error in Judge Lynch’s Findings and Recommendations. Plaintiff’s claims are barred by the doctrine set forth in *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Judge McLean is entitled to judicial immunity. Ms. Boylan is entitled to prosecutorial immunity. Plaintiff fails to state a plausible claim against Ms. Erb. Plaintiff’s complaint should be dismissed.

In addition, the dismissal of this case should constitute a strike under 28 U.S.C. § 1915(g). Plaintiff’s claims are *Heck* barred, barred by judicial and prosecutorial immunities, and fail to state a claim.

Finally, Plaintiff’s complaint is frivolous because it lacks arguable substance in law or fact. Accordingly, any appeal of this matter would not be taken in good faith.

IT IS ORDERED that

1. Judge Lynch’s Findings and Recommendations (Doc. 5) are
ADOPTED IN FULL.
2. Plaintiff’s complaint (Doc. 2) is DISMISSED.

3. The Clerk of Court shall have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).
4. The Clerk of Court shall have the docket reflect that the Court certifies pursuant to Fed.R.App. P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith.
5. Judgment shall be entered pursuant to Rule 58 of the Federal Rules of Civil Procedure.
6. This case is CLOSED.

DATED this 3rd day of April 2014.

A handwritten signature in black ink, reading "Dana L. Christensen". The signature is written in a cursive style with a large, looped initial "D".

Dana L. Christensen, Chief Judge
United States District Court